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18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

20 MILKSONGS, W CHAPPELL MUSIC
21 CORP. d/b/a WC MUSIC CORP.,
22 EAST JESUS MUSIC, and BUT MOM
23 I LOVE MUSIC,

24 Plaintiffs,

25 v.

26 COSTELLO, LLC and GERALD T.
27 COSTELLO,

28 Defendants.

Case No.

**COMPLAINT FOR VIOLATIONS
OF THE COPYRIGHT ACT**

(17 U.S.C. §§ 101 et seq.)

1 Plaintiffs, by their undersigned attorneys, allege:

2 1. This is a suit for copyright infringement under Title 17 of the United States
3 Code.

4 2. This Court has jurisdiction pursuant to 28 U.S.C. § 1338(a), and venue in
5 this District is proper pursuant to 28 U.S.C. § 1400(a).

6 3. Plaintiffs allege three (3) causes of action for copyright infringement
7 based on the Defendants' public performances of Plaintiffs' copyrighted musical
8 compositions. SCHEDULE A, annexed to the Complaint, sets forth in summary form
9 the allegations hereinafter made with respect to the Plaintiffs, their copyrighted musical
10 compositions, and Defendants' acts of infringement.

11 **THE PARTIES**

12 4. The Plaintiffs named in Column 2* are the owners of the copyrights in the
13 original musical compositions listed in Column 3, and are properly joined in this
14 complaint under Rule 20 of the Federal Rules of Civil Procedure.

15 5. On information and belief, Defendant Costello, LLC ("CLC") is a limited
16 liability company organized under the laws of the State of California with offices
17 located at 27567 Puerta Real, Mission Viejo, California 92691.

18 6. At all times hereinafter mentioned, CLC did, and still does, own, control,
19 manage, operate, and maintain a place of business for public entertainment,
20 accommodation, amusement, and refreshment known as Costello's, located at 27567
21 Puerta Real, Mission Viejo, California 92691.

22 7. Musical compositions were and are publicly performed at Costello's.

23 8. On information and belief, defendant Gerald T. Costello ("Costello" and,
24 collectively with CLC, the "Defendants") is an individual who resides and/or does
25 business in this district.

26
27
28

* All references to "columns" herein refer to the numbered columns set forth in
SCHEDULE A.

1 9. At all times hereinafter mentioned, Costello was, and still is, the Managing
2 Member of CLC.

3 10. At all times hereinafter mentioned, Costello was, and still is, responsible
4 for the control, management, operation and maintenance of the affairs of CLC.

5 11. At all times hereinafter mentioned, Defendants jointly had, and still have,
6 the right and ability to supervise and control the activities that take place at Costello's,
7 including the right and ability to supervise and control the public performance of
8 musical compositions at Costello's.

9 12. Each Defendant derives a direct financial benefit from the public
10 performance of musical compositions at Costello's.

11 **FACTS SPECIFIC TO DEFENDANTS' INFRINGEMENT OF**
12 **PLAINTIFFS' COPYRIGHTED MUSICAL COMPOSITIONS**

13 13. The Plaintiffs are all members of the American Society of Composers,
14 Authors, and Publishers ("ASCAP"), a membership association that represents,
15 licenses, and protects the public performance rights of its more than 980,000
16 songwriter, composer, and music publisher members.

17 14. Each ASCAP member grants to ASCAP a non-exclusive right to license
18 the performing rights in that member's copyrighted musical compositions. On behalf
19 of its members, ASCAP licenses public performances of its members' musical works,
20 collects license fees associated with those performances, and distributes royalties to its
21 members, less ASCAP's operating expenses.

22 15. In undertaking the conduct complained of in this action, Defendants
23 knowingly and intentionally violated Plaintiffs' rights. Defendants' knowledge and
24 intent are established by at least the following facts:

25 (a) Defendants obtained an ASCAP license agreement for Costello's,
26 effective October 15, 2016.

27 (b) Defendants, however, failed to pay license fees as required by the
28 license agreement.

1 (c) Because of Defendants' failure to pay license fees due, on April 30,
2 2019, upon written notice, ASCAP terminated the ASCAP license for Costello's.

3 16. On numerous occasions since April 30, 2019, ASCAP has attempted to
4 contact the Defendants, or their representatives, agents, or employees, to offer a new
5 ASCAP license to CLC for Costello's. ASCAP's representatives have contacted, or
6 attempted to contact, Defendants via mail, electronic mail, and phone.

7 17. Defendants have refused all of ASCAP's offers of a new license for
8 Costello's.

9 18. As a result of the foregoing, Costello's has been unlicensed by ASCAP
10 since April 30, 2019.

11 19. ASCAP's various communications offering a new license for Costello's
12 gave Defendants notice that unauthorized performances of ASCAP's members'
13 musical compositions at Costello's constitute copyright infringement.

14 20. Notwithstanding the foregoing, Defendants have continued to present
15 public performances of the copyrighted musical compositions of ASCAP members at
16 Costello's, including the copyrighted works involved in this action, without
17 permission, during the hours that the establishment is open to the public for business
18 and presenting musical entertainment.

19 21. The original musical compositions listed in Column 3 were created and
20 written by the persons named in Column 4.

21 22. The original musical compositions listed in Column 3 were published on
22 the dates stated in Column 5, and, since their respective dates of publication, have been
23 printed and published in strict conformity with Title 17 of the United States Code.

24 23. The Plaintiffs named in each cause of action, including their predecessors
25 in interest, if any, complied in all respects with Title 17 of the United States Code,
26 secured the exclusive rights and privileges in and to the copyright of each composition
27 listed in Column 3, and received from the Register of Copyrights a Certificate of
28 Registration, identified as set forth in Column 6.

1 24. Defendants on the dates specified in Column 7, and upon information and
2 belief, at other times prior and subsequent thereto, infringed the copyright in each
3 composition named in Column 3 by giving public performances of the compositions at
4 Costello's, for the entertainment and amusement of the patrons attending said premises,
5 and Defendants threaten to continue such infringing performances.

6 25. The public performances at Costello's of the Plaintiffs' copyrighted
7 musical compositions on the dates specified in Column 7 were unauthorized: neither
8 Defendants, nor any of the Defendants' agents, servants or employees, nor any
9 performer was licensed by, or otherwise received permission from any Plaintiff, or any
10 agent, servant, or employee of any Plaintiff, to give such performances.

11 26. In undertaking the conduct complained of in this action, Defendants
12 knowingly and intentionally violated Plaintiffs' rights.

13 27. The many unauthorized performances at Costello's include the
14 performances of the three copyrighted musical compositions upon which this action is
15 based.

16 28. At the times of the acts of infringement complained of, the Plaintiff named
17 in each cause of action was the owner of the copyright in the composition therein
18 named.

19 29. The said wrongful acts of the Defendants have caused and are causing
20 great injury to the Plaintiffs, which damage cannot be accurately computed, and unless
21 this Court restrains the Defendants from the further commission of said acts, said
22 Plaintiffs will suffer irreparable injury, for all of which the said Plaintiffs are without
23 any adequate remedy at law.

1 **WHEREFORE**, Plaintiffs pray:

2 I. That Defendants and all persons acting under the direction, control,
3 permission or authority of Defendants be enjoined and restrained permanently from
4 publicly performing the aforementioned compositions, or any work in the ASCAP
5 repertory, and from causing or permitting the said compositions, or any work in the
6 ASCAP repertory, to be publicly performed at Costello's, or at any place owned,
7 controlled, managed, or operated by Defendants, and from aiding or abetting the public
8 performance of such compositions in any such place or otherwise.

9 II. That Defendants be decreed to pay such statutory damages as to the Court
10 shall appear just, as specified in 17 U.S.C. § 504(c)(1), namely, not more than Thirty
11 Thousand Dollars (\$30,000) nor less than Seven Hundred And Fifty Dollars (\$750) in
12 each cause of action herein.

13 III. That Defendants be decreed to pay the costs of this action and that a
14 reasonable attorney's fee be allowed as part of the costs.

15 IV. For such other and further relief as may be just and equitable.

16 Dated: October 15, 2024

Respectfully submitted

17 ARNOLD & PORTER, LLP

18
19 By: /s/ Sharon D. Mayo

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Schedule A

Columns						
1	2	3	4	5	6	7
Cause of Action	Plaintiff	Musical Composition	Writers	Date of Publication	Certificate of Registration Number	Date of Known Infringement
1.	MILKSONGS	SEX TYPE THING	Dean DeLeo Robert E. DeLeo Eric Kretz Scott R. Weiland	September 1, 1992	PA 689-635	August 10, 2024
2.	W CHAPPELL MUSIC CORP. d/b/a WC MUSIC CORP. EAST JESUS MUSIC	HEY JEALOUSY	Douglas Hopkins	August 4, 1992	PA 668-620	August 11, 2024
3.	BUT MOM I LOVE MUSIC	FLAGPOLE SITTA	Aaron M. Huffman Jeff J. Lin Sean C. Nelson Evan C. Sult	March 31, 1998	PA 970-043	August 10, 2024